

Attachment 1

United States Government

Department of Energy

Memorandum

DATE: January 14, 1992

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REPLY TO
ATTN OF: EH-231

SUBJECT: The Resource Conservation and Recovery Act (RCRA) Mixture and "Derived-from" Rules

TO: Distribution

According to the subject rules, solid waste that is mixed with a listed hazardous waste, or derived from the treatment of hazardous waste is, in most cases, classified as hazardous waste. These rules were intended to prevent the dilution of hazardous waste via mixing with other wastes, and to maintain RCRA Subtitle C jurisdiction over treatment residues of hazardous waste.

On December 6, 1991, the U.S. Court of Appeals in Washington, DC ruled that the Environmental Protection Agency (EPA) did not properly seek public comment prior to promulgation of these rules, in violation of the Administrative Procedure Act (APA). As a result, these rulemakings were remanded to EPA. Under the rules of the court, a mandate (order) implementing this decision will take effect 45 days after the decision (i.e., January 27, 1992). Until the mandate is effective, the EPA has several, non-exclusive options. It may promulgate them as final rules on an interim basis, pending full notice and comment under the "good cause" exemption of APA. It may repropose them, and provide an opportunity for full public comment. Finally, it may decide to request a rehearing of the court ruling. The mandate of the court would be stayed while the petition for rehearing is being considered.

This Office is committed to keeping the Department informed of all developments resulting from this court decision, and providing every opportunity for comments on these rulemakings if re-proposed. To ensure that this process poses minimal disruption to Departmental operations, all waste handling activities should continue to be conducted as though the rules remain in full force and effect, until further notice.

Questions on the rules may be directed to Raymond Pelletier, Office of Environmental Guidance, FTS 896-8505. Questions regarding the court's decision should be directed to Dan Ruge or Robert Faron, Office of General Counsel, FTS 896-6947.

for Paul L. Ziemer, Ph.D.
Assistant Secretary
Environment, Safety and Health

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